

Will Info: Read Before Your Appointment

YOUR LAST WILL AND TESTAMENT

******Required****** Complete the will questionnaire prior to your appointment if your intent is to have the attorney draft your will after your first visit. The questionnaire is available at the DLI Legal Assistance Office, 242-5084, the Naval Postgraduate School Legal Office, 656-2506 and on the Web at http://www.monterey.army.mil/legal/wills/basic_will_questionnaire.pdf under "Wills & Estates". The following relates to the general law of wills. Every state's law is slightly different.

1. WHAT IS A LAST WILL AND TESTAMENT? Last Will and Testament is the legal document which controls the disposition of your property at death and may provide for guardianship for your children after your death. A will is not effective until death. As long as you are living, your will has no effect and no property or rights to property are transferred by it.

2. CAN MY LAST WILL AND TESTAMENT BE CHANGED? Yes. Changes to a will are made by drafting a new will and destroying the old one, or by adding a "Codicil." A Codicil is a legal document which must be signed and executed in the same manner as your will. Legal Assistance software makes it simpler to just do a new will. NEVER MAKE ANY CHANGES TO YOUR WILL without consulting an attorney. Changes on the face of your original will may make it invalid.

3. WHAT IS MY LEGAL RESIDENCE? Your legal residence is the state in which you have your true, fixed and permanent home and to which, if you are temporarily absent, you intend to return. Voting, paying taxes, owning property, motor vehicle registration and so on, are some indicators of one's legal residence of some state. You cannot be a citizen at large. If you are a naturalized U. S. Citizen, you are generally considered to be a resident of the state in which you were naturalized.

4. MY LEGAL RESIDENCE IMPORTANT WITH REGARD TO MY WILL? Yes. Your legal residence may affect where your will is probated and the amount of state inheritance or estate tax that may be paid at death.

5. WHAT IS MY ESTATE? Your estate consists of all of your property and personal belongings which you own or are entitled to possess at the time of your death. This includes real and personal property, cash, savings and checking accounts, stocks, bonds, real estate, automobiles, etc. Although the proceeds of insurance policies may be considered part of your estate in some states, a will does not change the designated beneficiaries of an insurance policy. The proceeds of an insurance policy, although part of your estate for tax purposes, will normally pass to the primary or secondary beneficiary designated on the face of the policy.

6. TO WHOM SHOULD I LEAVE MY ESTATE? A person who receives property through a will is known as a beneficiary. You may leave all of your property to one beneficiary, or you may wish to divide your estate among several persons. You may state in your will that several different items of property or sums of money shall go to different persons. In any event, you should decide on at least two levels of beneficiaries: PRIMARY BENEFICIARIES -- those who will inherit your property upon your death; and SECONDARY BENEFICIARIES -- those who will inherit your property in the event the primary beneficiaries die before you. You may even want to select a third-level beneficiary in the event that both the primary and secondary beneficiaries die before you. Most married persons leave all of their property to their spouse and, if their spouse does not outlive them, then to their children.

7. MAY A PERSON DISPOSE OF HIS PROPERTY IN ANY WAY? Almost, but not quite. For example, a married person cannot completely exclude a spouse. Generally, you are free to give

your property to whomever you desire. However, most states have laws which entitle spouses to at least part of the other spouse's estate. This statutory share ranges generally from 1/3 to 1/2 of the other spouse's estate. Insurance proceeds and jointly owned property may be controlled by other provisions of the law. If you have questions concerning the statutory share law in your home state, you should ask a legal assistance attorney.

8. SHOULD I NAME A GUARDIAN FOR MY CHILDREN IN MY WILL? Yes. A guardian should be named in a will to ensure that the children and their estates are cared for in the event that both parents should die. Your guardian should be chosen with extreme care as this person will be charged with the duty of raising your children and managing their legal affairs. Do not automatically assume that your parents or any other relative will be a suitable guardian. Such factors as the age of the guardian, age of the children, religion, social status, economics, and relation of the proposed guardian to the children, if any, should be considered in making your decision. Additionally, a substitute guardian should be chosen with the same care as the primary guardian just in case the primary guardian cannot serve in that capacity. Ultimately, a will nominates a guardian; it is up to the court to make the final decision on guardianship if the natural parents are deceased. Your choice, while not absolutely binding on the court, is highly persuasive.

9. I WANT MY PARENTS TO BE THE SECONDARY GUARDIANS OF OUR CHILDREN AND MY SPOUSE DISAGREES. DO WE HAVE TO AGREE ON THE APPOINTMENT OF A SUBSTITUTE GUARDIAN? It depends. The guardianship provision is normally effective when both parents die at or about the same time. As an example, if the husband's will nominates his parents and the wife's nominates her parents and both husband and wife die at or about the same time, then the court will have to decide who is the proper party to be the children's guardian. That will cause undue hardship on all parties concerned as well as considerable unnecessary expense, a large part of which your estate will have to pay. On the other hand, if each of the parents dies several years apart from one another, the guardianship clause in the second will to be probated is the only one that would be effective, so there would really be no conflict between the two wills if different secondary guardians were chosen by the husband and wife.

10. WHAT IS AN EXECUTOR? An executor (executrix, if female) or "personal representative" is the person who will manage and settle your estate according to the will. You should also consider naming a substitute executor in the event that the named executor is unable or unwilling to act as the executor of your estate.

11. WHAT IF I WANT TO SET UP A TRUST? The resources available in his office permit the drafting of simple children's trusts. Astute planning requires looking beyond your children's minority to give a sufficiently large estate to fund a college education, pay off a mortgage, help start a business, or provide some means of financial security to your children. The legal assistance attorney can prepare the trust you require and show how to fund it with life insurance proceeds or other assets. During your appointment you will be asked the age each child should receive his or her share of the remaining trust proceeds in a lump sum and whom you designate as primary and alternate trustee to manage the trust assets. The trustee need not be the same person as the guardian. The Legal Assistance Office does not prepare "Living Trusts", one purpose of which is to avoid federal estate taxes on large estates. If your assets including life insurance less debts exceeds \$700,000 you should consult an estate planning attorney.

12. WHAT IS PROBATE? A court procedure by which a will is proved valid or invalid. Probate proceedings also address the administration of your estate, taxes, and the guardianship of your children.

13. HOW LONG IS A WILL VALID? A properly drawn and executed will remains valid until it is Changed or revoked. However, changes in circumstances after a will has been made, such as tax laws, marriage, birth of children or even a substantial change in the nature or amount of a person's estate, can affect whether your will is still adequate or whether your property will still pass in the manner you chose. All changes in circumstances require a careful analysis and

reconsideration of the provisions of a will and may make it wise to change the will, with the help of your legal assistance attorney.

14. DOES A WILL INCREASE PROBATE EXPENSE? No. It usually costs less to administer an estate when a person leaves a will than when there is no will. A properly drafted will may reduce the expense of administration in a number of ways. Provisions can be placed in wills which take full advantage of the federal and state tax laws. Drawing a will can avoid the expense of posting bond or appointing a guardian for your children. A will can save money for you and your family if it is properly drafted.

15. HOW LARGE AN ESTATE IS NECESSARY TO JUSTIFY A WILL? Everyone who owns any real or personal property should consider having a will regardless of the present amount of his estate. Your estate grows daily in value through the repayment of mortgages, appreciation of real estate, stocks and other securities, inheritances from relatives and other factors.

16. I AM SINGLE WITHOUT CHILDREN, DO I NEED A WILL? The question must be answered by you. The attorney can advise you. For some, the intestacy laws are adequate: Generally, your property passes to your surviving parents and, if none, to your siblings.

17. WHAT HAPPENS WHEN YOU DON'T MAKE A WILL? When a person dies without a will (or dies intestate, as the law calls it) the property of the deceased is distributed according to a formula fixed by law. In other words, if you don't make a will, you don't have any say as to how your property will be divided. The disadvantage in a number of states is that if a person dies intestate and leaving children, the surviving spouse would share the estate with the children. Usually a person would prefer that all of his estate, if it is not large, go to the surviving spouse. If there are any children under 18, the property cannot be delivered to them and a guardian must be appointed for them, even though a parent survives. A guardian will require considerable expense and could create legal problems that might have been avoided with a will. Most important for mothers and fathers, however, is not the disposition of their property after their death but rather the proper care and custody of their minor children. Grandparents, other family members and godparents do not automatically receive custody of children who do not have surviving parent. Your will should specify the individual, as well as an alternate, you would like to nominate as the guardian of your children. This decision on your part will be of great assistance to the court in determining who will receive the custody of your children.

18. WHAT HAPPENS TO PROPERTY HELD IN THE NAMES OF BOTH HUSBAND AND WIFE? Joint bank accounts and real property held in the names of both husband and wife with right of survivorship usually pass to the survivor by law and not by the terms of the deceased's will.

19. IS A LIFE INSURANCE PROGRAM A SUBSTITUTE FOR A WILL? No. Life insurance is only one kind of property which a person may own. If a life insurance policy is payable to an individual, the will of the insured has no effect on the proceeds. If the policy is payable to the estate of the insured, the payment of the proceeds may be directed by a will. The careful person will have a lawyer and life insurance counselor work together on a life insurance program, as one important aspect of estate planning.

20. WHAT IF I STILL HAVE QUESTIONS REGARDING MY WILL?

Check the Legal Assistance Web Site at <http://www.monterey.army.mil/legal/index.html> under "Wills and Estates". Ask at your appointment with the attorney who will prepare your will. Be sure that you convey accurately to him your wishes for the distribution of your property. Call 242-5084/3 for an appointment.

Prepared by the Presidio of Monterey Legal Assistance Office, July 2010